

them is a mere matter of arithmetic;⁵ nor to money bonds stipulating for the payment of interest at specified times before the principal becomes due, if both principal and interest are due when the bond is sued, *Smith v. Bond*, 10 Bing. 125; nor to bonds conditioned for the payment of a principal sum at a certain time and interest in the meantime, with a stipulation that, on a failure to pay any accruing interest, the whole principal shall be demandable, *James v. Thomas*, 5 B. & Ad. 40. The Act of 1729, ch. 25, recited that this Statute did not fully provide for actions on Sheriffs' and testamentary bonds, and provided, that no suit on such bonds should be proceeded with to judgment in the provincial court, until the creditor had given notice and a copy of his demand to the defendant, and the Court was thereupon authorized to assess, or to appoint auditors to assess such damages, and judgment was to be entered in the ordinary way, but execution to issue only for the sum found due, unless either party prayed a writ of inquiry, which was then to be proceeded with as directed by the Statute of William 3, and execution to issue thereon only for the sum found by the jury, costs and interest till paid; and it was further provided, that no other creditor should come in for any part of the penalty, except by *scire facias* within eighteen months after the recovery of *such judgment, in which should be stated the **608** nature of his demand. This provision has not been incorporated in the Code. It would seem from this, that under the Act of 1729 one action was to be brought on the Bond. But with us now, each party brings a new suit, and each may recover to the full penalty, and it is so decided in the *State v. Wayman*, 2 G. & J. 254. In *Lawson v. State*, 2 Gill, 62, however, the Court intimated a doubt whether the instances above given are recognized as the law and practice of the State. By the Act of 1864, ch. 175,⁶ in case of judgment by default on any money bond, &c., the Court may on production of it assess the damages without the intervention of a jury. The Statute is not restrained to cases of conditions for performance of covenants in some other writing than the bond itself; the condition of the bond is an *agreement in writing* within it, *Collins v. Collins*, 2 Burr. 820, and generally, all bonds for the payment of money by instalments, not within the Statute of Anne—annuity bonds, *Walcot v. Goulding*, 8 T. R. 126—bonds for performance of an award, *Welch v. Ireland*, 6 East, 613—bonds for the payment of a sum certain, but appearing, by another instrument of writing, to be intended only as a security for the payment of what may be due to the obligee, for breach of articles of agreement, though such bond do not refer to the instrument which explains it, *Hurst v. Jennings*, 5 B. & C. 650—all bonds and contracts for penalties, for the performance of any covenants or agreements contained either in the writings themselves or in another deed or writing, *Harris v. Wilmer*, 5 H. & J. 2 note *a*, and, in our practice, statutory, as testamentary, bonds, or any other bond with a collateral condition, *Laidler's Adm'x v. State*, 2 H. & G. 277; *Lawson v. the*

⁵ *Gerrard v. Clowes*, (1892) 2 Q. B. 11; *Tuther v. Caralampi*, 21 Q. B. D. 414; *Preston v. Dania*, L. R. 8 Ex. 19.

⁶ Code 1911, Art. 75, sec. 89.